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DOCKET NO. 0826.1902

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Yasuyuki KITADA

Group Art Unit: 2622

Serial No: 10/705,219

Examiner: Dillon Durnford Geszvain

Confirmation No.: 4108

Filed: November 12, 2003

For: ELECTRONIC APPLIANCE AND ITS SHOOTING METHOD

**PETITION UNDER 37 C.F.R. § 1.181**  
**FOR WITHDRAWAL OF FINALITY OF LAST OFFICE ACTION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Office Action mailed September 11, 2007, having a shortened period for response set to expire on December 11, 2007 was made final. Applicants hereby petition withdrawal of the finality of this office action. Under M.P.E.P. § 706.07(c), any question as to prematurity of a final Office Action is reviewable by petition under 37 CFR § 1.181.

Applicant submits that this final Office Action is premature because the Examiner has introduced a new ground of rejection, based on cited structure in the prior art as described below, that was not necessitated by amendment nor based on information submitted in an information disclosure statement. M.P.E.P. § 706.07(a).

The outstanding Office Action is the first action to reject the claims with the intended citations from the prior art. Specifically, in the previous Office Action dated January 31, 2007, the Examiner cited to reference numeral 20 and page 2, lines 1-5 of WO 01/31893 by Haermae to teach or suggest both the image capture selecting unit and the shooting controlling unit features of the claims in the above mentioned application.

In view of the entire reference, Applicant understood the Examiner's citation to be the "radio transmitter receiver," properly referred to in the specification and drawing of Haermae as reference numeral 20. No citation to FIG. 4 or the part of the specification referring to FIG. 4, specifically was given which may have assisted Applicant in understanding the intended citation. Accordingly, Applicant prepared arguments with the understanding that Examiner had meant to refer to the radio transmitter (20).

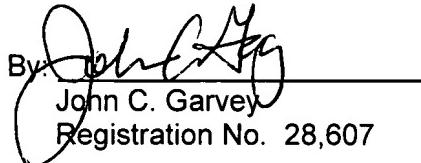
In the outstanding final Office Action, the Examiner now states that he intended to cite to the control block of FIG. 4, which was improperly labeled in the reference as 20, and not the radio transmitter receiver. Applicant now understands Examiner's current citation but requests the opportunity to respond to this new citation in a non-final Office Action.

Thus Applicant believes the final Office Action was premature and Applicant respectfully requests a withdrawal of the finality of the Office Action so as to have the chance to give a response to this first rejection on the claims, as intended by the Examiner.

Respectfully submitted,

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Date: 10-12-07

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